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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Gary E. Ross

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KOHN & ASSOCIATES PLLC
30500 NORTHWESTERN HWY
STE 410
FARMINGTON HILLS, MI 48334

EXAMINER

HILLERY, NATHAN

ART UNIT

PAPER NUMBER

2176

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/852,447

Applicant(s)

ROSS, GARY E.

Examiner

Nathan Hillery

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-16, 18-26 and 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-16, 18-26 and 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to communications: Amendment filed on 10/26/06.
2. Claims 1, 2, 3, 5 – 16, 18 – 26 and 51 are pending in the case. Claims 1, 15 and 51 are independent.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 3, 5 – 16, 18 – 26 and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Dart et al. (US 6529876 B1).
5. **Regarding independent claim 1**, Dart et al. teach that acquiring data prompted by the electronic template for the specific type of patient encounter comprising conducting an examination of at least a history component, a physical component and a medical decision component, by one or a plurality of patient encounter entities, as prompted by the selected electronic template. The method includes the outputting a Preliminary E&M code, inputting modifying variables and outputting a Final E&M code (Column 14, line 54 – Column 15, line 11), which meet the limitation of **a computer-readable medium encoding a selection option mechanism eliciting medical**

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coding information regarding a patient encounter through the analysis of clinician-entered information and predetermined criteria, said selection option mechanism comprising an elicitation database that requests targeted information regarding the patient encounter based upon the predetermined criteria found within the clinician-entered information.

Dart et al. teach that *Reception Interface 1820 represents immediate interactions with a patient with that interaction resulting in data acquisition which is maintained in the reception data base; similarly patient or patient encounter interactions at Nurse Station Software Interface 1810, Check-In Interface 1830, Check-Out Interface 1840 and Provider Interface 1850 represent interactions with a patient with that interaction resulting in data acquisition maintained in the respective data bases* (Column 10, lines 12 – 32), which meet the limitation of **storage means for storing the medical coding information for later access.**

6. **Regarding dependent claim 2,** Dart et al. teach that *Reception Interface 1820 represents immediate interactions with a patient with that interaction resulting in data acquisition which is maintained in the reception data base; similarly patient or patient encounter interactions at Nurse Station Software Interface 1810, Check-In Interface 1830, Check-Out Interface 1840 and Provider Interface 1850 represent interactions with a patient with that interaction resulting in data acquisition maintained in the respective data bases* (Column 10, lines 12 – 32), which meet the limitation of **storage means for**

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recording inputted predetermined criteria, entered information and conclusions thereof into a database.

7. **Regarding dependent claim 3**, Dart et al. teach that *This method and apparatus is directed to an electronic or computer base wherein a computer directed by a computer program performs a complete audit of E&M coding prior to billing thus ensuring compliance with statutory and regulatory requirements* (Column 2, lines 46 – 59), which meet the limitation of **said selection option mechanism is a software program.**

8. **Regarding dependent claim 5**, Dart et al. teach that *inputting into the computer modifying variables for the specific patient encounter* (Column 11, lines 15 – 34), which meet the limitation of **said selection option mechanism includes at least one of data addition means for adding information and data substituting means for substituting information.**

9. **Regarding dependent claim 6**, Dart et al. teach that *Provider Tables 1898 (tracking the History, Physical, Medical Decision Making, and Apply Modifying Variables 1100, 1200, 1300, 1660 leading to the Final E&M Code 1701) and other tables* (Column 10, lines 12 – 32), which meet the limitation of **said selection option mechanism includes an elicitation database for suggesting information for medical codes, alternative conclusions, and predetermined criteria to support the conclusions.**

10. **Regarding dependent claim 7**, Dart et al. teach that *the preferred embodiment of the invention provides a method and apparatus to maximize efficiency and accuracy for the provider in determining and documenting correct Evaluation and Management CPT code (E&M code or E&M coding) as required for agency reimbursement for health care delivered* (Column 2, lines 5– 10), which meet the limitation of **said selection option mechanism includes eliciting conclusions selected from the group consisting of medical payment codes, billing codes, treatment codes, and service codes.**

11. **Regarding dependent claim 8**, Dart et al. teach that *Reception Interface 1820 represents immediate interactions with a patient with that interaction resulting in data acquisition which is maintained in the reception data base, Reception Tables 1892(which tracks patient appointments, inquiries, and communications from the provider's workplace with the patient); similarly patient or patient encounter interactions at Nurse Station Software Interface 1810, Check-In Interface 1830, Check-Out Interface 1840 and Provider Interface 1850 represent interactions with a patient with that interaction resulting in data acquisition maintained in the respective data bases Nurse Station Tables 1890(tracking information taken by a nurse from or regarding a patient or patient encounter), Check-In Tables 1894(tracking the history and patients current status at the time of check-in and the time and date of check-in), Check-Out Tables 1896(tracking the delivery of instructions for laboratory or other care to be sought by the*

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*patient and the time and date of check-out), Provider Tables 1898(tracking the History, Physical, Medical Decision Making, and Apply Modifying Variables 1100, 1200, 1300, 1660 leading to the Final E&M Code 1701) and other tables (Column 10, lines 12 – 32), which meet the limitation of **said selection option mechanism includes analysis of predetermined criteria input wherein the criteria includes phrases, words, numbers and symbols relating to the conclusions.***

12. **Regarding dependent claim 9**, Dart et al. teach that *The preferred embodiment electronic template medical record coding system disclosed herein is illustrated in FIGS. 1 through 11 and can be provided in software for single-user operation on stand-alone personal computers, for example, by a sole practitioner or for multi-user operations on a network, used for example, by physicians and others within a single facility, clinic, group practice, hospital or other medical providers or organizations. In the preferred embodiment the present invention includes a Central Processing Unit Database server(CPU Database Server) 1870, one or more interfaces (Column 9, lines 5 – 15), which meet the limitation of **utilized on a device selected from the group consisting of hand-held devices, portable computers, desktop computers, wireless devices, web-based technology systems, touch screen devices, typing devices, and electronic devices.***

13. **Regarding dependent claim 10**, Dart et al. teach that *Realtime audits are audits occurring upon the inputting of acquired data, into the computer, following the*

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*conclusion of data inputting pertinent to each component of the patient encounter. The provider is prompted to contrast the data actually acquired with that required for the specific type of patient encounter and as required by regulation for billing purposes. The provider thus confirms that requisite data inputting has occurred (Column 9, lines 43 – 50), which meet the limitation of **accuracy confirming means for confirming the accuracy of previously entered information.***

14. **Regarding dependent claim 11**, Dart et al. teach that *Reception Interface 1820 represents immediate interactions with a patient with that interaction resulting in data acquisition which is maintained in the reception data base, ...; similarly patient or patient encounter interactions at Nurse Station Software Interface 1810, Check-In Interface 1830, Check-Out Interface 1840 and Provider Interface 1850 represent interactions with a patient with that interaction resulting in data acquisition maintained in the respective data bases ... (Column 10, lines 12 – 32), which meet the limitation of **searching means for locating words and phrases.*** It should be noted that databases inherently include searching mechanisms in further support Microsoft defines database as *A file composed of records, each containing fields together with a set of operations for searching, sorting, recombining, and other functions* (<[http://support.microsoft.com/default.aspx?scid = %2Fsupport%2Fglossary%2Fd.asp](http://support.microsoft.com/default.aspx?scid=%2Fsupport%2Fglossary%2Fd.asp)>).

15. **Regarding dependent claim 12**, Dart et al. teach that *Secure server-based electronic mail software linking people and information over enterprise networks, the*

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internet and other networks, may be employed (Column 10, lines 47 – 50), which meet the limitation of **linking means for linking to a listing and description of predetermined criteria**.

16. **Regarding dependent claim 13**, Dart et al. teach that *A template or form, specific to the particular type of patient encounter, is displayed on a computer screen which contains text fields, drop-down lists, check boxes and graphics* (Column 3, lines 3 – 6), which meet the limitation of **free-text entry means for entering text into said system**.

17. **Regarding dependent claim 14**, Dart et al. teach that *Cryptographic processing may be employed where output communications, of final E&M coding or other information, is transmitted, for example via internet or other electronic means, from the provider computer system to entities responsible for reimbursement, auditing or other functions* (Column 9, lines 59 – 63), which meet the limitation of **security means for restricting access to said system**.

18. **Regarding independent claim 15**, the claim incorporates substantially similar subject matter as claim 1, and is rejected along the same rationale.

19. **Regarding dependent claim 16**, Dart et al. teach that *Cryptographic processing may be employed where output communications, of final E&M coding or other*

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information, is transmitted, for example via internet or other electronic means, from the provider computer system to entities responsible for reimbursement, auditing or other functions (Column 9, lines 59 – 63), which meet the limitation of **accessible through communication systems selected from the group consisting of the Internet, Intranet, Extranet, and electronically.**

20. **Regarding dependent claims 18 – 26**, the claims incorporate substantially similar subject matter as claims 5 – 8, 10, 14 and 11 – 13, respectively, and are rejected along the same rationale.

21. **Regarding independent claim 51**, the claim incorporates substantially similar subject matter as claim 1, and is rejected along the same rationale.

Response to Arguments

22. Applicant's arguments filed 10/26/06 have been fully considered but they are not persuasive.

23. Applicant argues that Dart et al. do not anticipate the claims (p 8, first three full paragraphs).

The Office disagrees.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view

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of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

24. Applicant argues that the claims are patentable over Dart et al. because Applicant's invention performs the method steps in particular ways as described in the specification (p 9, last paragraph).

The Office disagrees.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

25. It should be noted that Applicant argues specific passages in the specification instead of claimed limitations [Arguments, p 9, last paragraph].

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "Augmenting is achieved in response to a prompting, wherein the user notes additions or substitutions to the criteria and/or conclusions and makes adjustments accordingly." (Page 11, lines 12-14); "Each information prompting form contains different prompts that query the health care provider to supply data or information regarding the patient encounters." (Page 23, lines 7-9); "The augmenting mechanism improves the accuracy of the medical coding and the overall quality of patient care by

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influencing the physician's decisions at the time of patient care delivery." (Page 25, lines 11-13)) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

26. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Hillery whose telephone number is (571) 272-4091. The examiner can normally be reached on M - F, 10:30 a.m. - 7:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather R. Herndon can be reached on (571) 272-4136. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NH


Heather R. Herndon
Supervisory Patent Examiner
Technology Center 2100